

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

BRIAN O'KEEFE,

Petitioner,

v.

DOUG GILLESPIE, *et al.*,

Respondents.

Case No. 2:12-cv-01388-MMD-CWH

ORDER

This habeas matter is before the Court on Petitioner Brian O'Keefe's motion for relief from judgment (ECF No. 9), request for electronic service of two docket entries (ECF No. 12), and motion for appointment of counsel (ECF No. 13).

On August 3, 2012, O'Keefe submitted a petition for writ of habeas corpus under 28 U.S.C. § 2241. (ECF No. 1-1.) In lieu of an application to proceed *in forma pauperis*, O'Keefe submitted a motion with an attached order from the Ninth Circuit stating that O'Keefe had been granted leave to proceed *in forma pauperis* in another case on appeal. (ECF No. 1.) On October 11, 2012, the Court instructed O'Keefe that he needed to properly initiate the instant action by moving for leave to proceed *in forma pauperis* or pay the filing fee "[e]ven if he ha[d] been granted pauper status in another case." (ECF No. 3.) The Court ordered O'Keefe to comply within 30 days, warning O'Keefe that failure to comply may result in dismissal of this action. (*Id.*)

The Court's October 11, 2012 order was mailed to O'Keefe and it was returned as undeliverable. (ECF No. 4.) The docket reflects that the order was not remailed because there was no other address available for O'Keefe. On November 13, 2012, the Court dismissed O'Keefe's petition without prejudice based on his failure to keep the Court apprised of his current address. (ECF No. 5.) Judgment was entered. (ECF No. 6.) On

1 November 27, 2012, O'Keefe filed a notice of change of address. (ECF No. 8.) The docket  
 2 reflects that the Clerk's Office mailed a copy of the dismissal order and the judgment to  
 3 O'Keefe's updated address on November 28, 2012. (ECF Nos. 5, 6.) O'Keefe now moves  
 4 for relief from the judgment under Fed. R. Civ. P. 60(b). (ECF No. 9.) He argues the  
 5 Court's procedural ruling was defective because (1) he did not receive the October 11,  
 6 2012 order, and (2) he filed a notice of change of address. (*Id.* at 1-4.)

7 Under Federal Rules of Civil Procedure 60(b), the Court may relieve a party from  
 8 a final judgment or order for the following limited reasons:

9 (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly  
 10 discovered evidence that, with reasonable diligence, could not have been  
 11 discovered in time to move for a new trial under Rule 59(b); (3) fraud  
 12 (whether previously called intrinsic or extrinsic), misrepresentation, or  
 13 misconduct by an opposing party; (4) the judgment is void; (5) the judgment  
 has been satisfied, released or discharged; it is based on an earlier  
 judgment that has been reversed or vacated; or applying it prospectively is  
 no longer equitable; or (6) any other reason that justifies relief.

14 Fed. R. Civ. P. 60(b). "A Rule 60(b) motion is proper when it 'attacks, not the substance  
 15 of the federal court's resolution of a claim on the merits, but some defect in the integrity  
 16 of the federal habeas proceedings.'" *Wood v. Ryan*, 759 F.3d 1117, 1120 (9th Cir. 2014)  
 17 (quoting *Gonzalez v. Crosby*, 545 U.S. 524, 532 (2005)). Motions for relief pursuant to  
 18 "Rule 60(b) must be made within a reasonable time." Fed. R. Civ. P. 60(c)(1).

19 Although O'Keefe attacks an alleged defect in the integrity of his habeas  
 20 proceedings, his motion for relief from judgment was not made within a reasonable time.  
 21 See Fed. R. Civ. P. 60(c)(1). The Court dismissed O'Keefe's petition and judgment was  
 22 entered on November 13, 2012. (ECF Nos. 5, 6.) O'Keefe did not move for relief from  
 23 judgment until June 22, 2022—9 years, 7 months, and 10 days later. Furthermore,  
 24 O'Keefe gives no explanation for this delay. Indeed, after O'Keefe filed his notice of  
 25 change of address, the Clerk's Office promptly remailed a copy of the dismissal order,  
 26 which referenced the October 11, 2012 order, and the judgment to O'Keefe's updated  
 27 address on November 28, 2012. As such, the grounds for O'Keefe's current motion were  
 28 known and available to O'Keefe in 2012. The Court therefore finds that O'Keefe's motion

1 for relief from judgment has not been made within a reasonable time. See Fed. R. Civ. P.  
2 60(c)(1).

3 Moreover, the Court's procedural ruling was not defective as O'Keefe claims. At  
4 the time O'Keefe filed his petition on August 3, 2012, he was located at the Clark County  
5 Detention Center. (ECF No. 1-1.) This Court received returned mail from O'Keefe on  
6 October 18, 2012, and November 19, 2012. (See ECF Nos. 4, 7.) However, O'Keefe did  
7 not file a notice of change of address until November 27, 2012. (ECF No. 8.) As set forth  
8 in the Local Rules, LR IA 3-1 states that a "pro se party must immediately file with the  
9 court written notification of any change of mailing address," and "[f]ailure to comply with  
10 this rule may result in the dismissal of the action." Based on LR IA 3-1, the Court's order  
11 dismissing O'Keefe's petition without prejudice for failing to keep the Court apprised of  
12 his address was not defective.

13 Because O'Keefe's motion for relief from judgment is denied, his motion for  
14 appointment of counsel is also denied as moot. However, the Court finds good cause to  
15 grant O'Keefe's request for copies of docket entries.

16 It is therefore ordered that Petitioner Brian O'Keefe's motion for relief from  
17 judgment (ECF No. 9) is denied.

18 It is further ordered that O'Keefe's motion for appointment of counsel (ECF No. 13)  
19 is denied as moot.

20 The Clerk of Court is directed to send O'Keefe a copy of his motion for leave to  
21 proceed *in forma pauperis* (ECF No. 1) and the order instructing O'Keefe to file a new  
22 motion (ECF No. 3).

23 It is further ordered that, because reasonable jurists would not find this decision to  
24 be debatable or wrong, a certificate of appealability is denied.

25 DATED THIS 11<sup>th</sup> Day of July 2022.

26  
27   
28 MIRANDA M. DU,  
CHIEF UNITED STATES DISTRICT JUDGE